

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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SHAWN CROSS,

Plaintiff,

vs.

GOLDON NUGGET HOTEL & CASINO, et al.,

Defendants.

Case No. 2:22-cv-00611-JAD-VCF

**ORDER**

APPLICATION TO PROCEED *IN FORMA*  
*PAUPERIS* (EFC NO. 2)

Pro se plaintiff Shawn Cross filed an application to proceed in forma pauperis (IFP). ECF No. 2. I deny Cross's IFP application without prejudice.

**DISCUSSION**

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action “without prepayment of fees or security thereof” if the plaintiff submits a financial affidavit that demonstrates the plaintiff “is unable to pay such fees or give security therefor.” The Ninth Circuit has recognized that “there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status.” *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). If the court determines that an individual's allegation of poverty is untrue, “it shall dismiss the case.” 28 U.S.C. § 1915(e)(2).

The applicant's affidavit must state the facts regarding the individual's poverty “with some particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have

1 the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed  
2 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district  
3 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to  
4 verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's  
5 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.  
6 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in  
7 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-  
8 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma  
9 pauperis application).

10 The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for  
11 incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated  
12 persons. The Long Form requires more detailed information than the Short Form. The court typically  
13 does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears  
14 that the plaintiff is concealing information about his income for determining whether the applicant  
15 qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct  
16 form must be submitted, and the applicant must provide all the information requested in the Long Form  
17 so that the court is able to make a fact finding regarding the applicant's financial status. See e.g. *Greco v.*  
18 *NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov.  
19 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL,  
20 2016 WL 7493963 (D. Nev. Dec. 30, 2016).

21  
22 Plaintiff Cross submitted the Short Form IFP application. ECF No. 2. Under penalty of perjury,  
23 plaintiff swears that he has no income, no property, no car, no housing, no money in the bank, no bills,  
24 and no debts. *Id.* He does not provide any information in his sworn application regarding how he lives  
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1 with no money and no bills. *Id.* He also lists his home address as a P.O. Box, but he provides no  
2 explanation regarding how he pays for the P.O. Box, considering that he swears he has no bills. *Id.*

3 I find that it appears that plaintiff is concealing information about his household income and I  
4 cannot determine whether the applicant qualifies for IFP status. I will give plaintiff one opportunity to  
5 file a complete IFP application. I order that the plaintiff must complete the Long Form application. He  
6 must provide an explanation for each of the questions. Since he must complete the Long Form, plaintiff  
7 is required to provide comprehensive information regarding his sources of income, employment history,  
8 bank accounts, assets, monthly expenses, age, how he pays his bills (such as his P.O. Box), and his years  
9 of schooling, among other things.

10 I deny plaintiff's IFP application without prejudice. I give plaintiff thirty days to file an updated  
11 IFP application. Plaintiff must fully answer all applicable questions and check all applicable boxes.  
12 Plaintiff may alternatively pay the filing fee in full. Since I deny plaintiff's IFP application, I do not  
13 screen his complaint now.

14  
15 **ACCORDINGLY,**

16 I ORDER that Cross's application to proceed in forma pauperis (ECF No. 2) is DENIED without  
17 prejudice.

18 I FURTHER ORDER that Cross has until Thursday, May 19, 2022, to file an updated IFP  
19 application using the Long Form or pay the filing fee as specified in this order. Failure to timely comply  
20 with this Order may result in case closure or a recommendation for dismissal with prejudice.

21 **NOTICE**

22 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
23 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
24 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
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1 may determine that an appeal has been waived due to the failure to file objections within the specified  
2 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

3 This circuit has also held that (1) failure to file objections within the specified time and (2)  
4 failure to properly address and brief the objectionable issues waives the right to appeal the District  
5 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d  
6 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).  
7 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any  
8 change of address. The notification must include proof of service upon each opposing party's attorney,  
9 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may  
10 result in dismissal of the action.

11 IT IS SO ORDERED.

12 DATED this 19th day of April 2022.



14 CAM FERENBACH  
15 UNITED STATES MAGISTRATE JUDGE  
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